

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Andrew B. Austin, Plaintiff, v. LexisNexis Risk Solutions Inc., Defendant.	Case No.: 23-cv-00869-JMB-JFD JOINT STIPULATION AND MOTION TO CONDUCT THREE DEPOSITIONS AFTER THE DISCOVERY CUT-OFF DATE
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Plaintiff Andrew B. Austin and Defendant LexisNexis Risk Solutions Inc., by and through their respective undersigned counsel, jointly stipulate and move the Court for permission to take three deposition after the discovery cut-off date of May 15, 2024 established by the Court’s scheduling order dated April 2, 2024 [ECF 35.] If permission is granted, one of the depositions will be taken on or before May 28, 2024 and the others (subject to subpoena) no later than July 1, 2024.

Under Local Rule 16.3(b), a party moving to modify a scheduling order must “establish good cause for the proposed modification; and (2) explain the proposed modification’s effect on any deadlines.” D. Minn. LR 16.3(b)(1-2). Good cause exists to modify this Amended Scheduling Order.

Plaintiff originally served Defendant with deposition notices for Defendant’s Rule 30(b)(6) deposition and Rule 30(b)(1) depositions of persons who handled Plaintiff’s disputes with Defendant on March 20, 2024 setting them for March 28, 2024 and March 27, 2024 respectively. Defendant served objections to the Notices on March 26, 2024.

Defendant did not at that time check the current employment status of the three 30(b)(1) deponents. Those witnesses' identities were apparent from documents produced by Defendant on September 20, 2023.

Promptly after entry of the third amended scheduling order, on April 19, 2024 Plaintiff again noticed the Rule 30(b)(1) depositions of Defendant employees who conducted the investigations into Plaintiff's disputes, setting the date for May 10, 2024, and a Rule 30(b)(6) deposition on twelve topics for May 15, 2024. On April 26, 2024, in attempting to schedule appearances, Defendant advised Plaintiff's counsel that two of the three Rule 30(b)(1) deponents were no longer employed by Defendant. Defendant noticed Plaintiff's deposition for May 13, 2024. A settlement conference with the Court is scheduled in this case for May 9, 2024.

On consideration of the Rule 30(b)(6) deposition topics specified by Plaintiff, Defendant concluded that ten of the topics (principally regarding processes applicable to Plaintiff's contacts with Defendant) could be addressed by an employee located in Alpharetta, Georgia, and two of the topics (relating to how information about another consumer came to be linked to Plaintiff's file) should be addressed by an employee located in Dayton, Ohio. The only Rule 30(b)(1) witness still employed by Defendant is located in Alpharetta. One of the former employees was employed in Alpharetta, and the other was employed in the Philippines. Defendant has not to date explicitly identified the Rule 30(b)(1) witnesses by name (apart from reflecting their involvement in the produced documents), and has not provided Plaintiff's counsel with last known addresses. Defendant

will provide the addresses no later than May 10, 2024. Plaintiff will immediately begin attempting to communicate and serve them with subpoenas.

Defendant understands that its late notice that the two former employee witnesses are no longer employed is prejudicial to Plaintiff and therefore does not object to the taking of these two witnesses once Plaintiff locates and communicates with them.

The "linking" witness is scheduled to be on personal leave the week of May 13, 2024, and thus was unavailable on the originally noticed date for the Rule 30(b)(6) deposition. Defendant proposed putting up the linking witness on May 10, and shifting the Rule 30(b)(1) deposition to May 15.

Defendant's practice is to have counsel prepare witnesses for deposition at least in part in person, and to be physically present with the witness during the deposition. Lead counsel for Defendant on this matter, James F. McCabe, resides in Northern California, an hour and 45 minutes from the Sacramento airport.

On investigation of travel options that permitted counsel to prepare the Dayton witness in person in advance of a May 10 deposition, counsel learned that he would be required to travel to Dayton on May 7, to prepare the witness on May 8, attend the mediation on May 9, and defend the deposition on May 10.

Mr. McCabe had previously accepted an invitation to attend the District Court induction ceremony of Judge Rita F. Lin on the afternoon of May 8, at the United States District Court in San Francisco. Judge Lin started her legal career working at Morrison & Foerster LLP, where Mr. McCabe was then a partner. Mr. McCabe supervised the then-

Ms. Lin on her first appearance to argue a motion in federal court (which she won.)

Mr. McCabe would very much like to attend Judge Lin's induction ceremony.

Upon realizing the implications of the travel schedule for a May 10 deposition in Dayton, counsel for Defendant asked Plaintiff's counsel if the Dayton deposition could be deferred until a date after the discovery cutoff. Plaintiff's counsel was willing to do so, if the Court would approve a deposition on a later date.

Defendant has confirmed that the Dayton witness can be available for deposition on May 23 or 24, 2024 but Plaintiff's counsel is unavailable on those dates and the first available date is May 28, 2024.

The parties therefore request that the Court approve the taking of a Rule 30(b)(6) deposition on two topics no later than May 28, 2024 and allows Plaintiff to take the other two former employees of Defendant if located on or before July 1, 2024.

CONSUMER JUSTICE CENTER, P.A.

Dated: May 6, 2024

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Dated: May 6, 2024

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